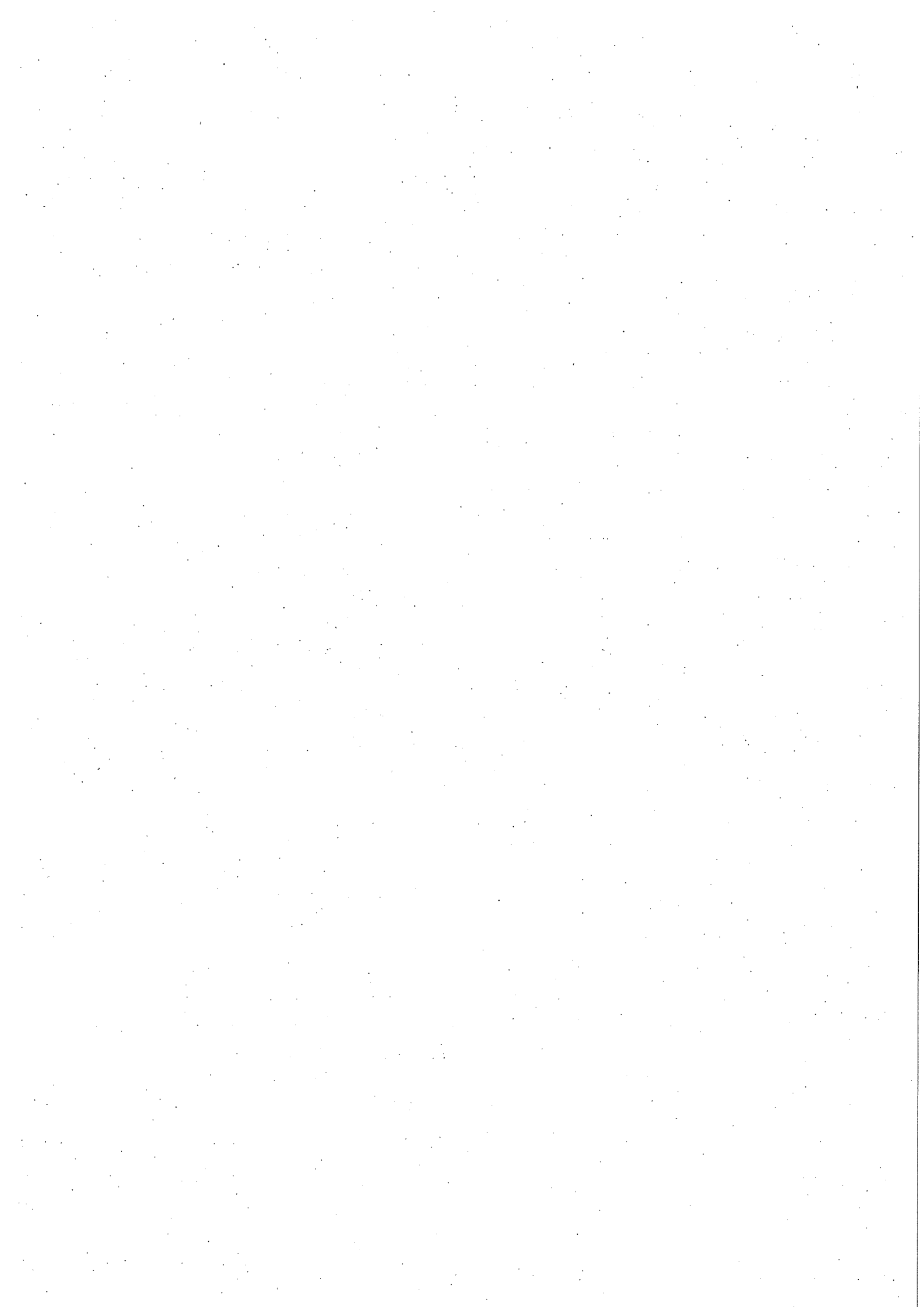


**REDACTED**

**BRIEFS**





**SUBJECT:** MAJURA PARKWAY PROJECT – CONTRACTOR DISPUTE

**To:** Director-General, Commerce & Works Directorate

**Critical Date for consideration:** 15 April 2014

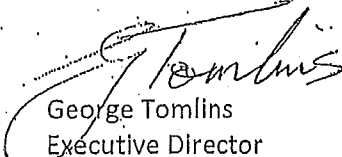
**Purpose:** To brief you on a potential dispute between contractors on the Majura Parkway Project

**Key Points:**

- Through informal communication with industry, Shared Services Procurement (“SSP”) has become aware that Hewatt Pty Ltd (“Hewatt”) is considering asking for a release of its contract with Fulton Hogan Pty Ltd (“Fulton Hogan”) for work on the Majura Parkway project. Hewatt are contracted to perform earthworks on this project.
- It is believed that the reason for this request is that continuing with the existing contract has become uneconomical for Hewatt. SSP understands that there are considerable amounts of money involved in this dispute.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.

**Recommendations:**

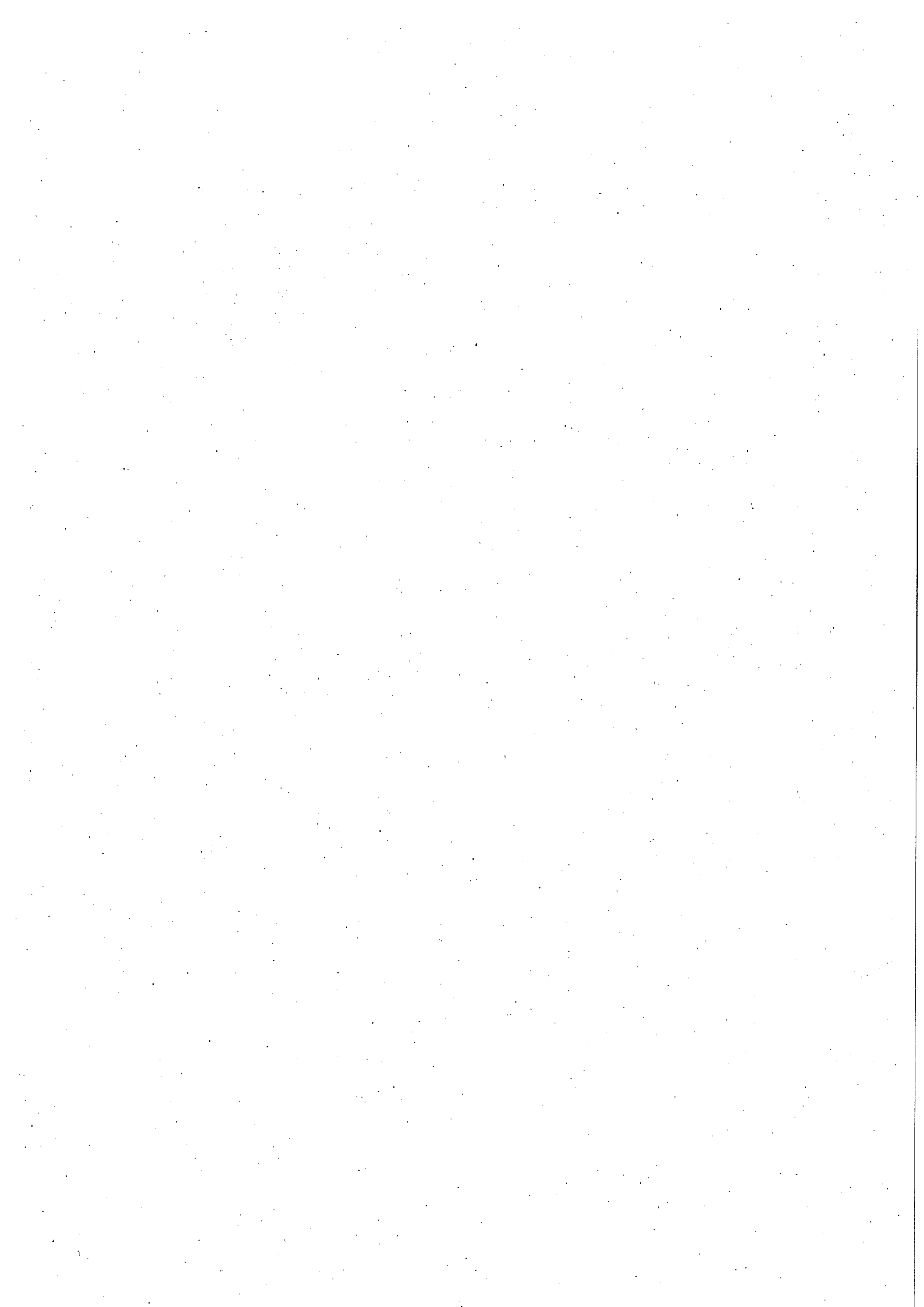
- It is recommended that you note the information in this minute.

  
 George Tomlins  
 Executive Director  
 Shared Services Procurement  
 15 April 2014

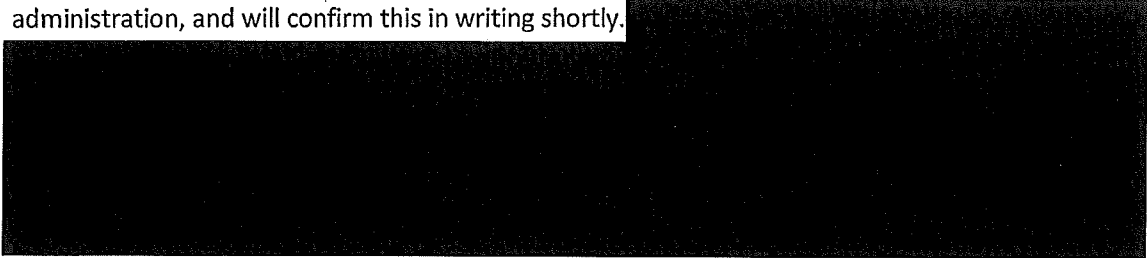
*I must have signed it off + put it back in my tray!*

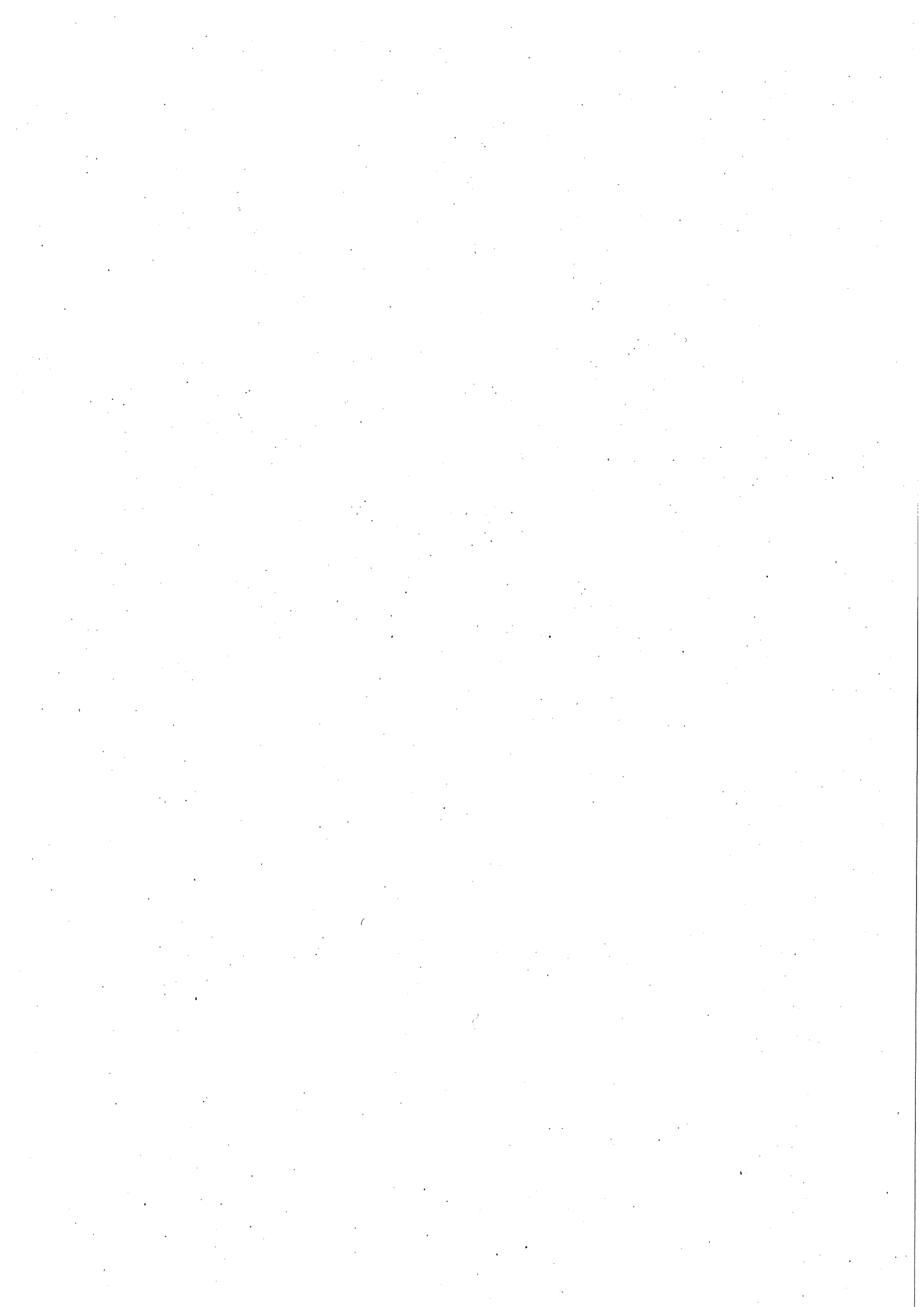
Noted / Approved / Not approved / Please discuss  
 Megan Smithies 28/04/2014

Contact: Ben Power      Position: Government Business Officer      Extension: x79342



- Shared Services Procurement ("SSP") met with PPB Advisory from 1-2pm on Monday 12 May 2014. PPB Advisory is the administrator for Hewatt following its entry into voluntary administration on 8 May 2014.
- PPB advised that it understood Fulton Hogan had not yet decided upon how it would replace Hewatt on the Majura Parkway project. PPB understands that Fulton Hogan is talking to approximately 10-20 former Hewatt employees, with a view to potentially employing them to continue on the project.
- We understand that approximately 40 Hewatt employees were working on the Majura Parkway project at the time it entered into administration. At the meeting on 12 May 2014 PPB asserted that the total number of Hewatt employees was approximately 80-100, but it is not clear whether this refers to the Majura Parkway project alone or covers all Hewatt projects.
- PPB advised that Hewatt intended to complete works on Horse Park Drive while in administration, and will confirm this in writing shortly.







**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR ISSUES**

To: Treasurer

Critical Date for consideration: As soon as possible

**Purpose: To inform you of a dispute between Hewatt and Fulton Hogan in relation to the Majura Parkway project.**

---

**Key Points:**

- Hewatt Pty Ltd (“Hewatt”) entered into voluntary administration on 8 May 2014. The administrators are PPB Advisory Pty Ltd (“PPB Advisory”).
- Hewatt
  - [projects]
- Following a preliminary review of Hewatt’s position PPB Advisory has stood down most of Hewatt’s employees, and committed to working constructively with all stakeholders including employees, unions, subcontractors and government.
- Withdrawal from sites, including equipment
- 

**Majura Parkway**

- Hewatt is engaged as a subcontractor on the Majura Parkway project by Fulton Hogan Pty Ltd (“Fulton Hogan”). The awarded value of the contract between the Territory and Fulton Hogan is \$268,276,814.35 (GST inclusive). The Commonwealth Government is contributing \$144 million towards the cost of the Majura Parkway project.
- Shared Services Procurement (“SSP”) understands that on the morning of 7 May 2014 Hewatt stood down all of its employees across every work site on which it operates. SSP understands that Hewatt has approximately 70 employees and sub-contractors engaged on the Majura Parkway project.
- The immediate trigger for this stand-down of workers appears to be the failure of Fulton Hogan to transfer a pre-agreed sum of money to Hewatt on 6 May 2014. Without this injection of cash Hewatt has determined it is not in a position to continue works, as doing so may have raised the risk of illegally trading while insolvent.

— SSP understands that the anticipated payment from Fulton Hogan to Hewatt was part of the agreement reached during negotiations between both parties on 5 May 2014, rather than being written into the sub-contract between Fulton Hogan and Hewatt. It does not appear that Fulton Hogan has broken a contractual agreement with Hewatt by failing to make this payment.

- The principal reason for Hewatt's financial difficulties appears to be Hewatt's estimation of its costs as a sub-contractor on this project, rather than the primary contract between the Territory and the Head Contractor.
- Fulton Hogan retains its assurance that the Majura Parkway project will be completed according to the program and budget established in its existing contract with the Territory. The contract between Fulton Hogan and Hewatt does not directly involve the ACT Government. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- Work on the Majura Parkway project is continuing despite Hewatt's absence from site. Approximately 95 per cent of earthworks have already been completed.
- Should Hewatt fail to complete the full scope of its contracted works on the Majura Parkway project, it is likely that a number of its current staff will have their employment ceased. However, as the scope of works of the Majura Parkway project has not changed, it is expected that a similar number of workers will be required to complete them – whether they are engaged by Hewatt, another earthworks contractor, or by Fulton Hogan directly.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project. Liability for any potential non-payment of sub-contractors on the Majura Parkway project rests with Fulton Hogan rather than the Territory. Fulton Hogan is employed under a GC-21 contract, which is designed to provide strong protection to both sub-contractors and the Government.
  - Fulton Hogan bears overall responsibility for the acts and omissions of all sub-contractors on the Majura Parkway project. Consequently, liability for any non-payment of sub-contractors rests with Fulton Hogan. This includes liability for non-payment of any contractors sub-contracted to a sub-contractor.

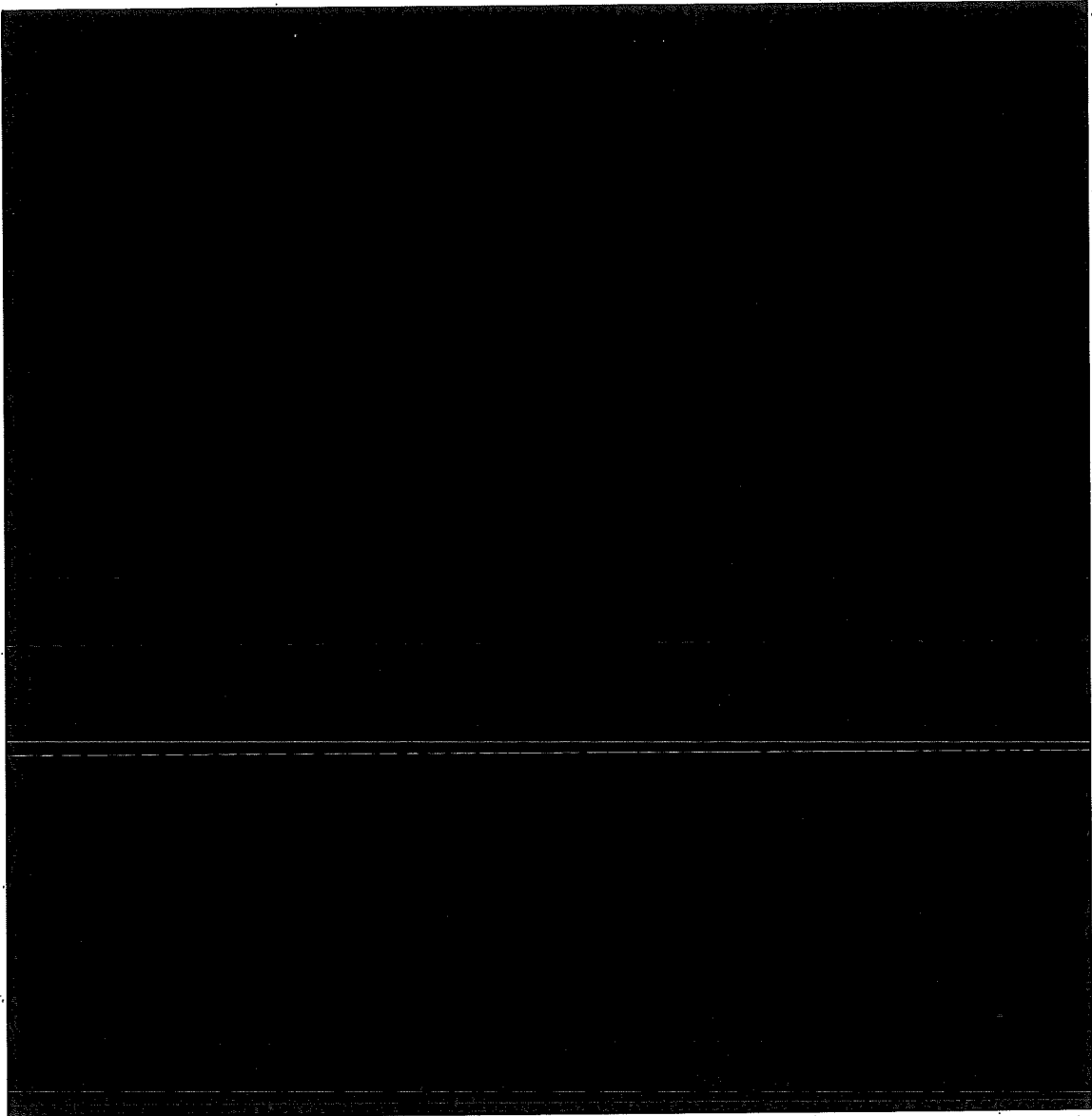


- The Territory is also indemnified against any legal claim resulting from non-payment of sub-contractors on the Majura Parkway project, including the non-payment of any contractors sub-contracted to a sub-contractor.
- Fulton Hogan is also required to undertake the project in accordance with the ACT Government's Compliance with Industrial Relations and Employment Obligations Strategy ("IRE Strategy"). The IRE Strategy requires contractors to obtain an Ethical Suppliers Declaration with every payment claim from their sub-contractors, stating that the sub-contractor has in turn paid all amounts due to its own sub-contractors at that date. Fulton Hogan is consequently responsible for ensuring each of its sub-contractors comply with their payment obligations to their own sub-contractors.
- The Head Contract between the Territory and Fulton Hogan "cascades" responsibility for complying with the IRE Strategy down from the Head Contractor to sub-contractors, and to any contractors sub-contracted to a sub-contractor.
  - Sub-contracts with a value of \$200,000 or greater contain provisions requiring the sub-contractor to comply with the IRE Strategy, "cascading" this obligation down from Fulton Hogan to the sub-contractor.
  - All sub-contracts with a value less than \$200,000 contain provisions requiring the contractor to pay each claim to the sub-contractor in full within 15 days of its being made.

Background to the dispute

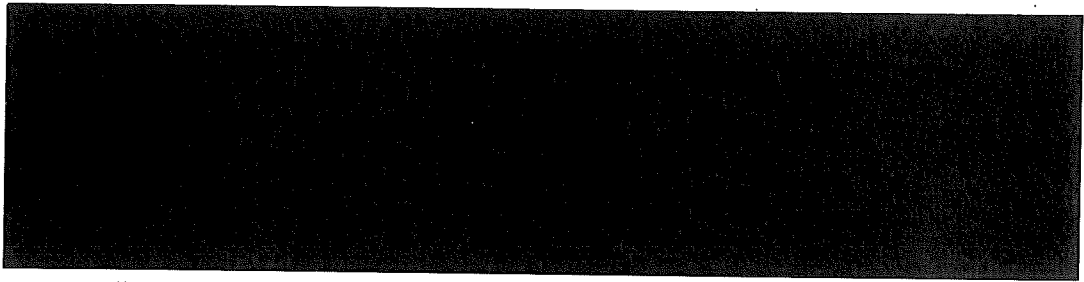
- SSP understands that Hewatt has been experiencing significant financial difficulties for some time. On 17 April 2014, Hewatt wrote to Fulton Hogan requesting a release from its contract as it had become uneconomical to continue works. Hewatt stated that unless a release was granted or the contract terms re-negotiated, Hewatt would enter into administration on 1 May 2014. Hewatt and Fulton Hogan met to discuss this dispute on 24 April 2014. Both parties agreed to work on reaching a mutually satisfactory resolution to the dispute, with Hewatt remaining on-site in the interim.
- Hewatt and Fulton Hogan met again on 2 May 2014 and 5 May 2014 to discuss ways forward. Both parties agreed to continue work on the project for one week, during which time they will attempt to reach a longer-lasting agreement. SSP understands that Fulton Hogan agreed to make a payment of approximately [REDACTED] to Hewatt to ensure these works go ahead, as well as an additional immediate cash advance to ensure Hewatt is able to pay its staff. It appears that this payment was not made.
- As of 5 May 2014, Fulton Hogan's preferred option for a longer-term agreement was to continue to work with Hewatt until achievement of Milestone One in the contract (main roadworks north of the Molonglo River). This is expected to occur


in September. The current contract between parties would be ended and a new contract established on a cost-plus basis. Fulton Hogan would also make an additional payment to Hewatt of approximately [REDACTED] for the period up to 5 May 2014. SSP understands that following the achievement of Milestone One, Fulton Hogan would then seek to employ another earthworks contractor to complete the remaining scope of works (southern approaches and traffic switches).



Steps Forward

- SSP and Roads ACT are already in contact with the administrator, and will continue to meet in the week beginning 12 May 2014 to discuss options going forward. The first meeting of creditors will be held in Canberra on 20 May 2014.



- SSP will continue to work closely with Fulton Hogan to ensure the Majura Parkway project remains on program and within budget. SSP will also liaise with representatives of the unions to hear any concerns they may have and outline what actions it will take going forward.
- Any escalation of costs associated with Fulton Hogan procuring an alternative contractor to do the work originally contracted to Hewatt, where the scope of works remains as in the contract between the Territory and Fulton Hogan, will be the responsibility of Fulton Hogan. The Territory will only be liable for cost escalations which result from an increase to the scope of works. No such additional scope is envisioned at this time.
- The Government will continue to hold all securities from Hewatt until all outstanding issues have been resolved.
- SSP understands that Hewatt owes monies to a number of other local firms for services provided on a sub-contractual basis for various projects. In particular, significant debts are owed to 
- Should Fulton Hogan and Hewatt be unable to agree on a new contract to cover the period up to Milestone One, other options will be explored to ensure these earthworks are completed. This could involve the immediate engagement of another contractor by Fulton Hogan, or the acquisition of Hewatt by Fulton Hogan.

**Suggested speaking notes:**

- ACT Government has appointed Fulton Hogan to deliver the project for us. There are a number of sub contractors working on the project including Hewatt's – earthworks contractor.
- ACT Government is aware that FH is in discussion with Hewatts.
- Those discussions are ongoing this week and are a commercial matter for FH and Hewatts.
- We understand that work is continuing and that a new night work program commenced on Monday 5 May and it planned to continue for the next month.
- Government cannot pre-empt the outcome of these discussions as they are a matter for the Contractor. However we closely monitor progress on the project and progress to date has been good and we expect the project to be completed on time (June 2016) and within budget.
- Understand there is a lot of discussion and rumour around this but it is important that the current status of this issue be clearly outlined.

**Recommendations:**

- It is recommended that you note the information in this minute.

Paul Peters  
 Executive Director  
 Territory and Municipal Services

George Tomlins  
 Executive Director  
 Shared Services Procurement

May 2014

Noted / Approved / Not approved / Please discuss  
 Andrew Barr MLA / /2014

Noted / Approved / Not approved / Please discuss  
 Shane Rattenbury MLA / /2014



**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR ISSUES**

To: Treasurer

Critical Date for consideration: As soon as possible

**Purpose: To inform you of a dispute between Hewatt and Fulton Hogan in relation to the Majura Parkway project.**

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**Key Points:**

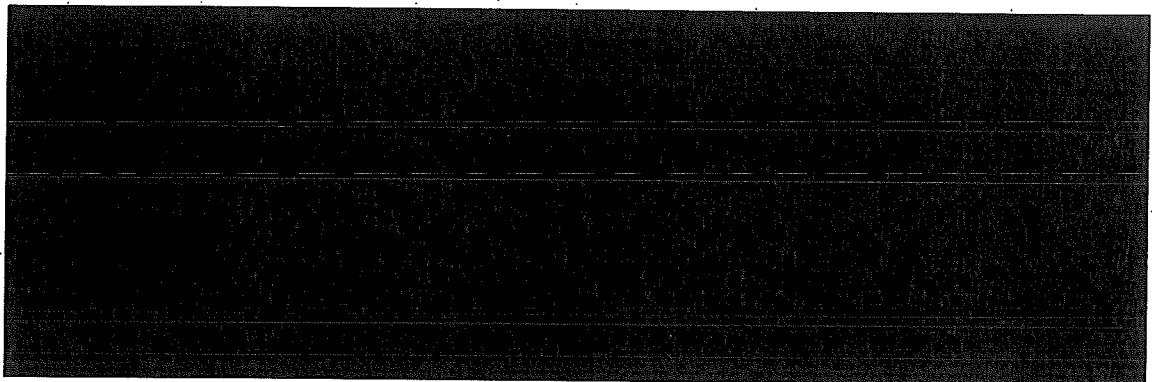
- Given the potential contractual ramifications of this issue, Government should limit its public comment.
  - Much of the detail which follows under this heading are matters between Fulton Hogan and Hewatt, and are provided for background briefing and not public comment.
- Hewatt Pty Ltd (“Hewatt”) is engaged as a subcontractor on the Majura Parkway project by Fulton Hogan Pty Ltd (“Fulton Hogan”). The awarded value of the contract between the Territory and Fulton Hogan is \$268,276,814.35 (GST inclusive). The Commonwealth Government is contributing \$144 million towards the cost of the Majura Parkway project.
- Shared Services Procurement (“SSP”) understands that on the morning of 7 May 2014 Hewatt stood down all of its employees across every work site on which it operates. SSP understands that Hewatt has approximately 70 employees and sub-contractors engaged on the Majura Parkway project.
- The immediate trigger for this stand-down of workers appears to be the failure of Fulton Hogan to transfer a pre-agreed sum of money to Hewatt on 6 May 2014. Without this injection of cash Hewatt has determined it is not in a position to continue works, as doing so may have raised the risk of illegally trading while insolvent.
  - SSP understands that the anticipated payment from Fulton Hogan to Hewatt was part of the agreement reached during negotiations between both parties on 5 May 2014, rather than being written into the sub-contract between Fulton Hogan and Hewatt. It does not appear that Fulton Hogan has broken a contractual agreement with Hewatt by failing to make this payment.
- The principal reason for Hewatt’s financial difficulties appears to be Hewatt’s estimation of its costs as a sub-contractor on this project, rather than the primary contract between the Territory and the Head Contractor.

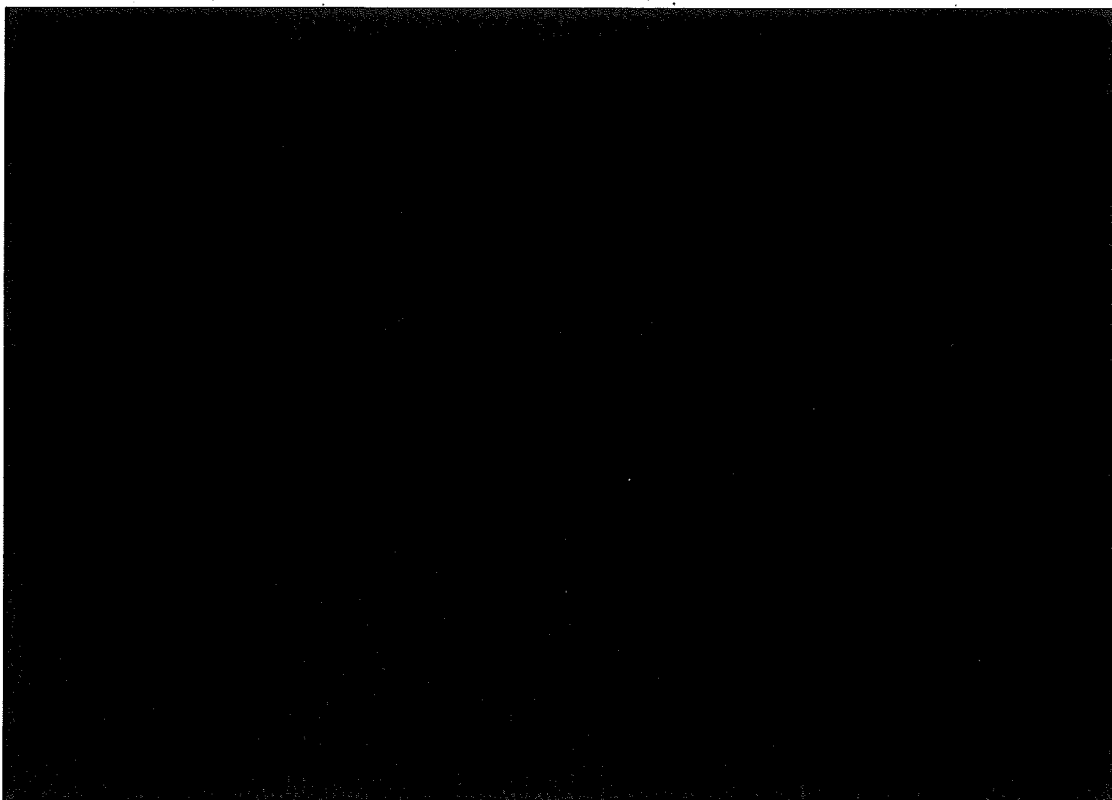
- Work on the Majura Parkway project on 7 May 2014 continued as scheduled, with the exception of Hewatt's absence. Approximately 95 per cent of earthworks have already been completed.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. Fulton Hogan have assured the Territory that this dispute will not have any impact upon the budget or program of the Majura Parkway project. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- Should Hewatt fail to complete the full scope of its contracted works on the Majura Parkway project, it is likely that a number of its current staff will have their employment ceased. However, as the scope of works of the Majura Parkway project has not changed, it is expected that a similar number of workers will be required to complete them – whether they are engaged by Hewatt, another earthworks contractor, or by Fulton Hogan directly.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project. Liability for any potential non-payment of sub-contractors on the Majura Parkway project rests with Fulton Hogan rather than the Territory. Fulton Hogan is employed under a GC-21 contract, which is designed to provide strong protection to both sub-contractors and the Government.
  - Fulton Hogan bears overall responsibility for the acts and omissions of all sub-contractors on the Majura Parkway project. Consequently, liability for any non-payment of sub-contractors rests with Fulton Hogan. This includes liability for non-payment of any contractors sub-contracted to a sub-contractor.
  - The Territory is also indemnified against any legal claim resulting from non-payment of sub-contractors on the Majura Parkway project, including the non-payment of any contractors sub-contracted to a sub-contractor.
- Fulton Hogan is also required to undertake the project in accordance with the ACT Government's Compliance with Industrial Relations and Employment Obligations Strategy ("IRE Strategy"). The IRE Strategy requires contractors to obtain an Ethical Suppliers Declaration with every payment claim from their sub-contractors, stating that the sub-contractor has in turn paid all amounts due to its own sub-contractors at that date. Fulton Hogan is consequently responsible for ensuring each of its sub-contractors comply with their payment obligations to their own sub-contractors.
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- Sub-contracts with a value of \$200,000 or greater contain provisions requiring the sub-contractor to comply with the IRE Strategy, "cascading" this obligation down from Fulton Hogan to the sub-contractor.
- All sub-contracts with a value less than \$200,000 contain provisions requiring the contractor to pay each claim to the sub-contractor in full within 15 days of its being made.

Background to the dispute

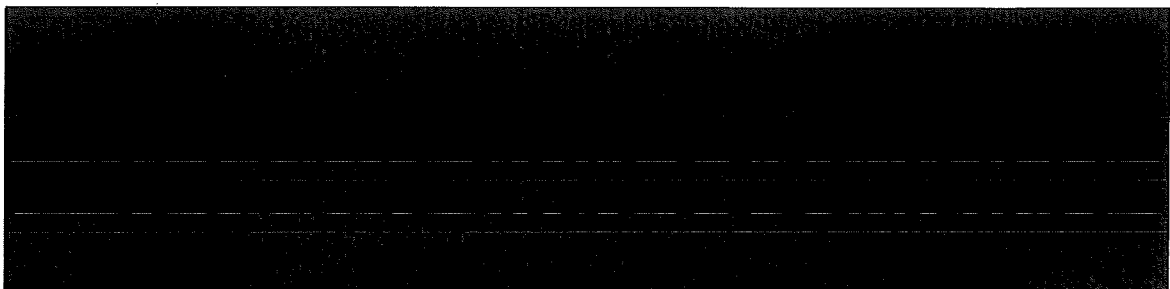
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- Hewatt and Fulton Hogan met again on 2 May 2014 and 5 May 2014 to discuss ways forward. Both parties agreed to continue work on the project for one week, during which time they will attempt to reach a longer-lasting agreement. SSP understands that Fulton Hogan agreed to make a payment of approximately [REDACTED] to Hewatt to ensure these works go ahead, as well as an additional immediate cash advance to ensure Hewatt is able to pay its staff. It appears that this payment was not made.
- As of 5 May 2014, Fulton Hogan's preferred option for a longer-term agreement was to continue to work with Hewatt until achievement of Milestone One in the contract (main roadworks north of the Molonglo River). This is expected to occur in September. The current contract between parties would be ended and a new contract established on a cost-plus basis. Fulton Hogan would also make an additional payment to Hewatt of approximately [REDACTED] for the period up to 5 May 2014. SSP understands that following the achievement of Milestone One, Fulton Hogan would then seek to employ another earthworks contractor to complete the remaining scope of works (southern approaches and traffic switches).





Steps Forward

- SSP and Roads ACT will meet with \_\_\_\_\_ as a matter of urgency to discuss \_\_\_\_\_  
– [OR: strategy for going forward]
- SSP will continue to work closely with Fulton Hogan to ensure the Majura Parkway project remains on program and within budget. SSP will also liaise with representatives of the unions to hear any concerns they may have and outline what actions it will take going forward.
- Any escalation of costs associated with Fulton Hogan procuring an alternative contractor to do the work originally contracted to Hewatt, where the scope of works remains as in the contract between the Territory and Fulton Hogan, will be the responsibility of Fulton Hogan. The Territory will only be liable for cost escalations which result from an increase to the scope of works. No such additional scope is envisioned at this time.



- SSP understands that Hewatt owes monies to a number of other local firms for services provided on a sub-contractual basis for various projects. In particular, significant debts are owed to \_\_\_\_\_



- Should Fulton Hogan and Hewatt be unable to agree on a new contract to cover the period up to Milestone One, other options will be explored to ensure these earthworks are completed. This could involve the immediate engagement of another contractor by Fulton Hogan, or the acquisition of Hewatt by Fulton Hogan.

**Suggested speaking notes:**

- ACT Government has appointed Fulton Hogan to deliver the project for us. There are a number of sub contractors working on the project including Hewatt's – earthworks contractor.
- ACT Government is aware that FH is in discussion with Hewatts.
- Those discussions are ongoing this week and are a commercial matter for FH and Hewatts.
- We understand that work is continuing and that a new night work program commenced on Monday 5 May and it planned to continue for the next month.
- Government cannot pre-empt the outcome of these discussions as they are a matter for the Contractor. However we closely monitor progress on the project and progress to date has been good and we expect the project to be completed on time (June 2016) and within budget.
- Understand there is a lot of discussion and rumour around this but it is important that the current status of this issue be clearly outlined.

**Recommendations:**

- It is recommended that you note the information in this minute.

Paul Peters  
Executive Director  
Territory and Municipal Services

George Tomlins  
Executive Director  
Shared Services Procurement

May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014

Noted / Approved / Not approved / Please discuss  
Shane Rattenbury MLA / /2014



**ACT**  
Government

Commerce and Works

14  
MINUTE

**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR ISSUES**

To: Treasurer

Critical Date for consideration: As soon as possible

**Purpose: To inform you of a dispute between Hewatt and Fulton Hogan in relation to the Majura Parkway project.**

---

**Key Points:**

- Given the potential contractual ramifications of this issue, Government should limit its public comment.
  - Much of the detail which follows under this heading are matters between Fulton Hogan and Hewatt, and are provided for background briefing and not public comment.
- Hewatt Pty Ltd (“Hewatt”) is engaged as a subcontractor on the Majura Parkway project by Fulton Hogan Pty Ltd (“Fulton Hogan”). SSP understands that Hewatt is currently experiencing significant financial difficulties.
- On 17 April 2014, Hewatt wrote to Fulton Hogan requesting a release from its contract as it had become uneconomical to continue works. Hewatt stated that unless a release was granted or the contract terms re-negotiated, Hewatt would enter into administration on 1 May 2014. Hewatt and Fulton Hogan met to discuss this dispute on 24 April 2014. Both parties agreed to work on reaching a mutually satisfactory resolution to the dispute, with Hewatt remaining on-site in the interim.
- Hewatt and Fulton Hogan met again on 2 May 2014 and 5 May 2014 to discuss ways forward. Shared Services Procurement (“SSP”) understands that both parties have agreed to continue work on the project for one week, during which time they will attempt to reach a longer-lasting agreement. SSP further understands that Fulton Hogan has agreed to make a payment of approximately [REDACTED] to Hewatt to ensure these works go ahead, as well as an additional immediate cash advance to ensure Hewatt is able to pay its staff.
- Fulton Hogan’s preferred option for a longer-term agreement is to continue to work with Hewatt until achievement of Milestone One in the contract, which is expected to occur in September. The current contract between parties would be ended and a new contract established on a cost-plus basis, ensuring that Hewatt is able to continue until this time. Fulton Hogan could also make an additional payment to Hewatt of approximately [REDACTED] for the period up to 5 May 2014.

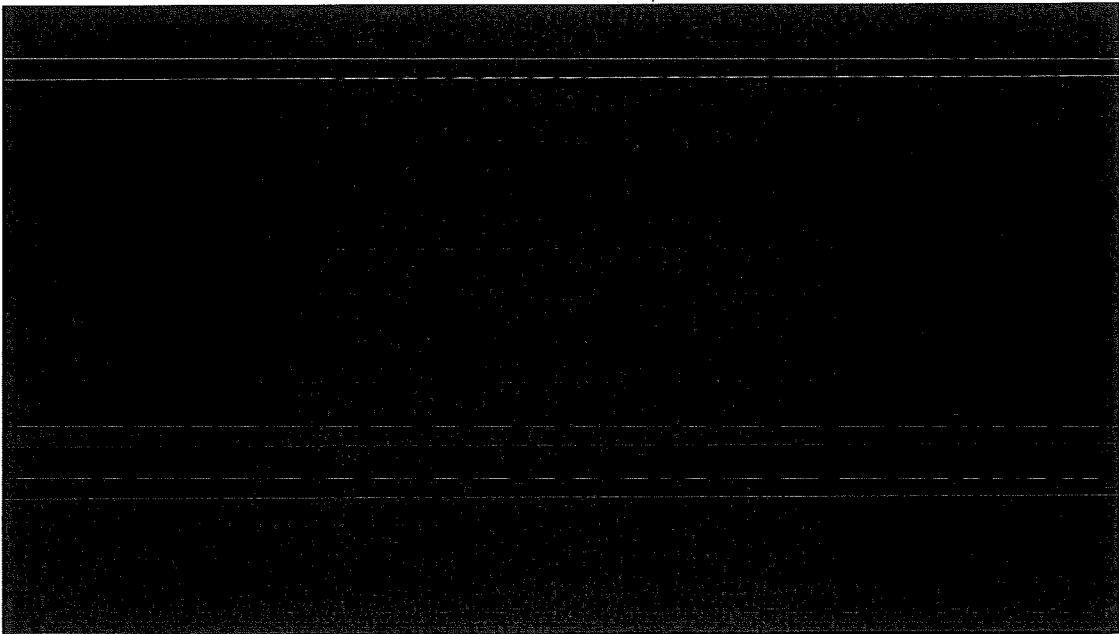
Contact: Ben Power

Position: Government Business Officer

Extension: x79342

File No.:

- SSP understands that following the achievement of Milestone One, Fulton Hogan would then seek to employ another earthworks contractor to complete the remaining scope of works.
- Should Fulton Hogan and Hewatt be unable to agree on a new contract to cover the period up to Milestone One, other options will be explored to ensure these earthworks are completed. This could involve the immediate engagement of another contractor by Fulton Hogan, or the acquisition of Hewatt by Fulton Hogan.
- SSP understands that Hewatt has approximately 70 employees and sub-contractors engaged on the Majura Parkway project, and only limited other employment in the ACT.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. Fulton Hogan have assured the Territory that this dispute will not have any impact upon the budget or program of the Majura Parkway project. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- Should Hewatt fail to complete the full scope of its contracted works on the Majura Parkway project, it is likely that a number of its current staff will have their employment ceased. However, the scope of works of the Majura Parkway project has not changed, and it is consequently expected that an equivalent number of workers will be engaged by new earthmoving contractors to complete these works.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.



**Suggested speaking notes:**

- ACT Government has appointed Fulton Hogan to deliver the project for us. There are a number of sub contractors working on the project including Hewatt's – earthworks contractor.
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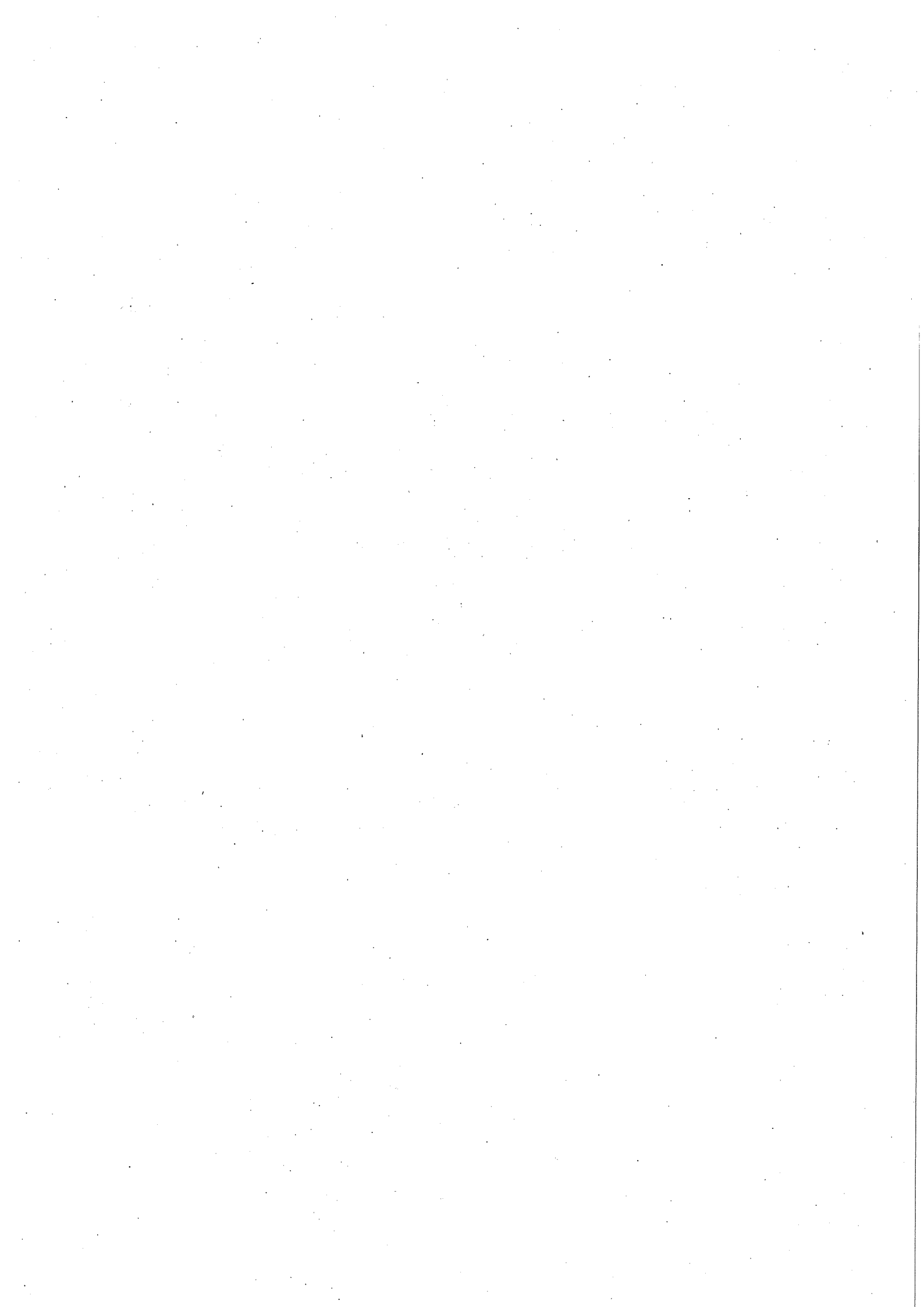
Paul Peters  
Executive Director  
Territory and Municipal Services

George Tomlins  
Executive Director  
Shared Services Procurement

6 May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014

Noted / Approved / Not approved / Please discuss  
Shane Rattenbury MLA / /2014





**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR ISSUES**

To: Treasurer

Critical Date for consideration: As soon as possible

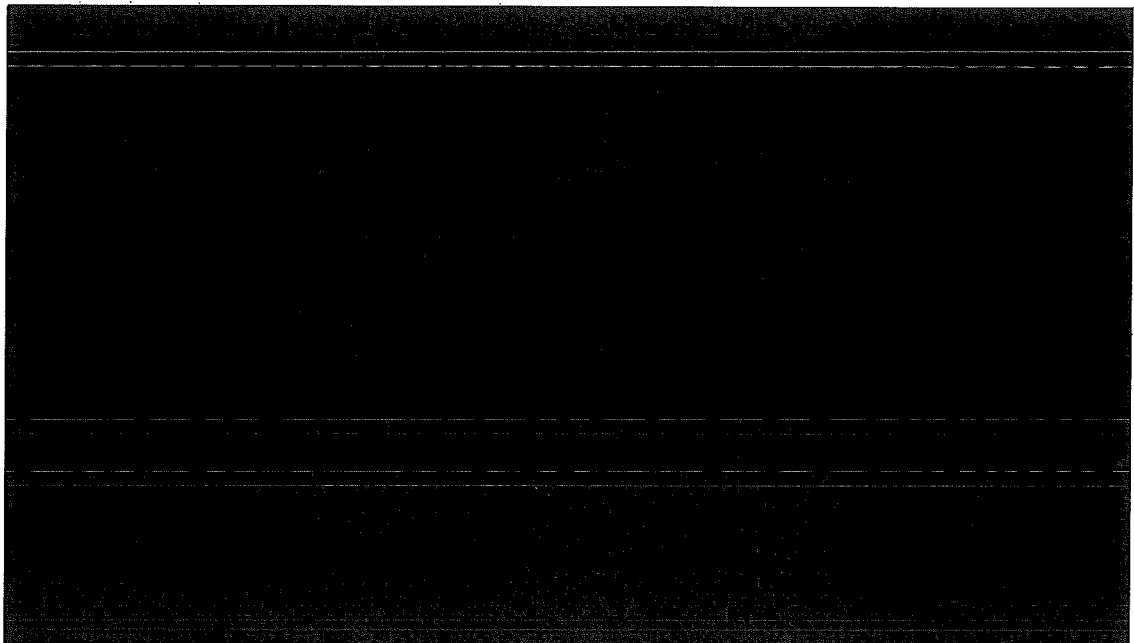
**Purpose: To inform you of a dispute between Hewatt and Fulton Hogan in relation to the Majura Parkway project:**

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- Hewatt and Fulton Hogan met again on 2 May 2014 and 5 May 2014 to discuss ways forward. Shared Services Procurement (“SSP”) understands that both parties have agreed to continue work on the project for one week, during which time they will attempt to reach a longer-lasting agreement. SSP further understands that Fulton Hogan has agreed to make a payment of approximately [REDACTED] to Hewatt to ensure these works go ahead, as well as an additional immediate cash advance to ensure Hewatt is able to pay its staff.
- Fulton Hogan’s preferred option for a longer-term agreement is to continue to work with Hewatt until achievement of Milestone One in the contract, which is expected to occur in September. The current contract between parties would be ended and a new contract established on a cost-plus basis, ensuring that Hewatt is able to continue until this time. Fulton Hogan could also make an additional payment to Hewatt of approximately [REDACTED] for the period up to 5 May 2014.

- SSP understands that following the achievement of Milestone One, Fulton Hogan would then seek to employ another earthworks contractor to complete the remaining scope of works.
- Should Fulton Hogan and Hewatt be unable to agree on a new contract to cover the period up to Milestone One, other options will be explored to ensure these earthworks are completed. This could involve the immediate engagement of another contractor by Fulton Hogan, or the acquisition of Hewatt by Fulton Hogan.
- SSP understands that Hewatt has approximately 70 employees and sub-contractors engaged on the Majura Parkway project, and only limited other employment in the ACT.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. Fulton Hogan have assured the Territory that this dispute will not have any impact upon the budget or program of the Majura Parkway project. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- Should Hewatt fail to complete the full scope of its contracted works on the Majura Parkway project, it is likely that a number of its current staff will have their employment ceased. However, the scope of works of the Majura Parkway project has not changed, and it is consequently expected that an equivalent number of workers will be engaged by new earthmoving contractors to complete these works.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.





**Suggested speaking notes:**

- ACT Government has appointed Fulton Hogan to deliver the project for us. There are a number of sub contractors working on the project including Hewatt's – earthworks contractor.
- ACT Government is aware that FH is in discussion with Hewatts.
- Those discussions are ongoing this week and are a commercial matter for FH and Hewatts.
- We understand that work is continuing and that a new night work program commenced on Monday 5 May and it planned to continue for the next month.
- Government cannot pre-empt the outcome of these discussions as they are a matter for the Contractor. However we closely monitor progress on the project and progress to date has been good and we expect the project to be completed on time (June 2016) and within budget.
- Understand there is a lot of discussion and rumour around this but it is important that the current status of this issue be clearly outlined.

**Recommendations:**

- It is recommended that you note the information in this minute.

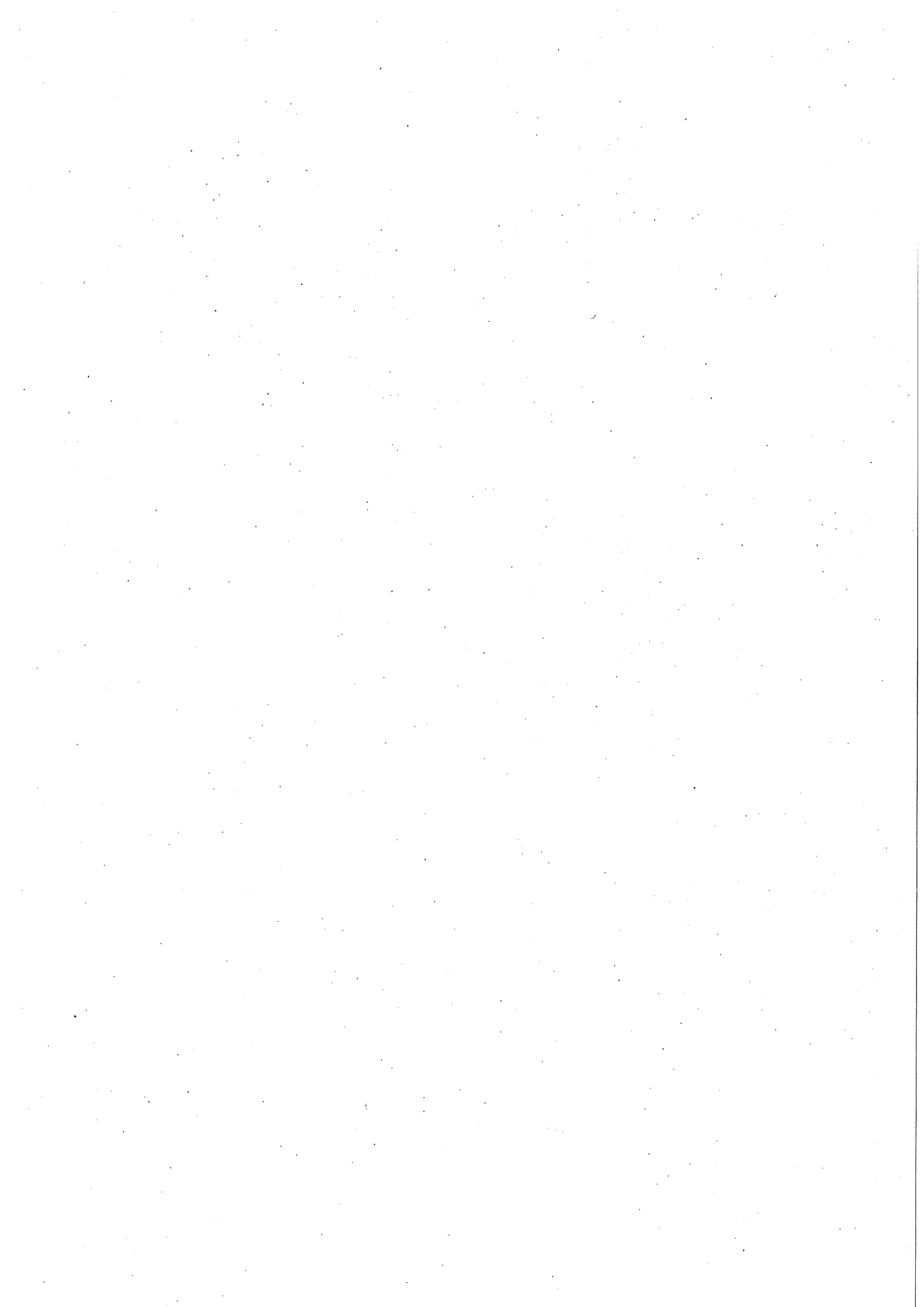
Paul Peters  
Executive Director  
Territory and Municipal Services

George Tomlins  
Executive Director  
Shared Services Procurement

5 May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014

Noted / Approved / Not approved / Please discuss  
Shane Rattenbury MLA / /2014





**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR ISSUES**

To: Treasurer

Critical Date for consideration: As soon as possible

**Purpose: To inform you of a dispute between Hewatt and Fulton Hogan in relation to the Majura Parkway project.**

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**Key Points:**

- Hewatt Pty Ltd (“Hewatt”) is engaged as a subcontractor on the Majura Parkway project by Fulton Hogan Pty Ltd (“Fulton Hogan”). SSP understands that Hewatt is currently experiencing significant financial difficulties, principally due to poor estimation of costs when entering into contract with Fulton Hogan. This has led to its being locked into uncommercial rates on the Majura Parkway project.
- On 17 April 2014, Hewatt wrote to Fulton Hogan requesting a release from its contract as it had become uneconomical to continue works. Hewatt stated that unless a release was granted or the contract terms re-negotiated, Hewatt would enter into administration on 1 May 2014. Hewatt and Fulton Hogan met to discuss this dispute on 24 April 2014. Both parties agreed to work on reaching a mutually satisfactory resolution to the dispute, with Hewatt remaining on-site in the interim.
- Hewatt and Fulton Hogan met again on 2 May 2014 and 5 May 2014 to discuss ways forward. Shared Services Procurement (“SSP”) understands that both parties have agreed to continue work on the project for one week, during which time they will attempt to reach a longer-lasting agreement. SSP further understands that Fulton Hogan has agreed to make a payment of approximately [REDACTED] to Hewatt to ensure these works go ahead, as well as an additional immediate cash advance to ensure Hewatt is able to pay its staff.
- Fulton Hogan’s preferred option for a longer-term agreement is to continue to work with Hewatt until achievement of Milestone One in the contract, which is expected to occur in September. The current contract between parties would be ended and a new contract established on a cost-plus basis, ensuring that Hewatt is able to continue until this time. Fulton Hogan could also make an additional payment to Hewatt of approximately [REDACTED] for the period up to 5 May 2014.
- SSP understands that following the achievement of Milestone One, Fulton Hogan would then seek to employ another earthworks contractor to complete the remaining scope of works.

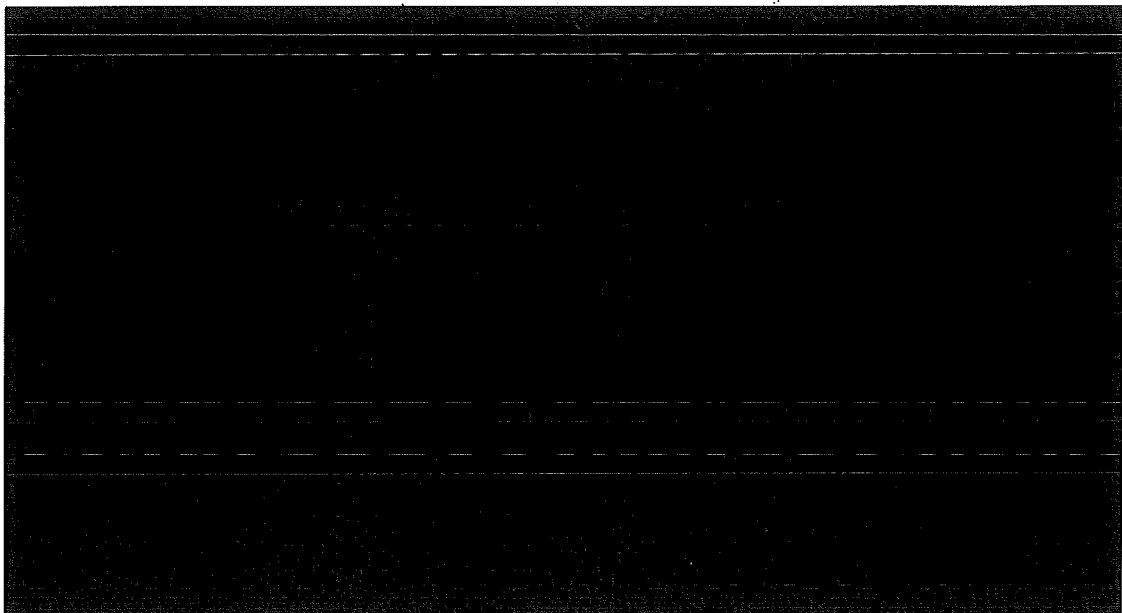
Contact: Ben Power

Position: Government Business Officer

Extension: x79342

File No.:

- Should Fulton Hogan and Hewatt be unable to agree on a new contract to cover the period up to Milestone One, other options will be explored to ensure these earthworks are completed. This could involve the immediate engagement of another contractor by Fulton Hogan, or the acquisition of Hewatt by Fulton Hogan.
- SSP understands that Hewatt has approximately 70 employees and sub-contractors engaged on the Majura Parkway project, and only limited other employment in the ACT.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party.
- Fulton Hogan have assured the Territory that this dispute will not have any impact upon the budget or program of the Majura Parkway project. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- Should Hewatt fail to complete the full scope of its contracted works on the Majura Parkway project, it is likely that a number of its current staff will have their employment ceased. However, the scope of works of the Majura Parkway project has not changed, and it is consequently expected that an equivalent number of workers will be engaged by new earthmoving contractors to complete these works.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.





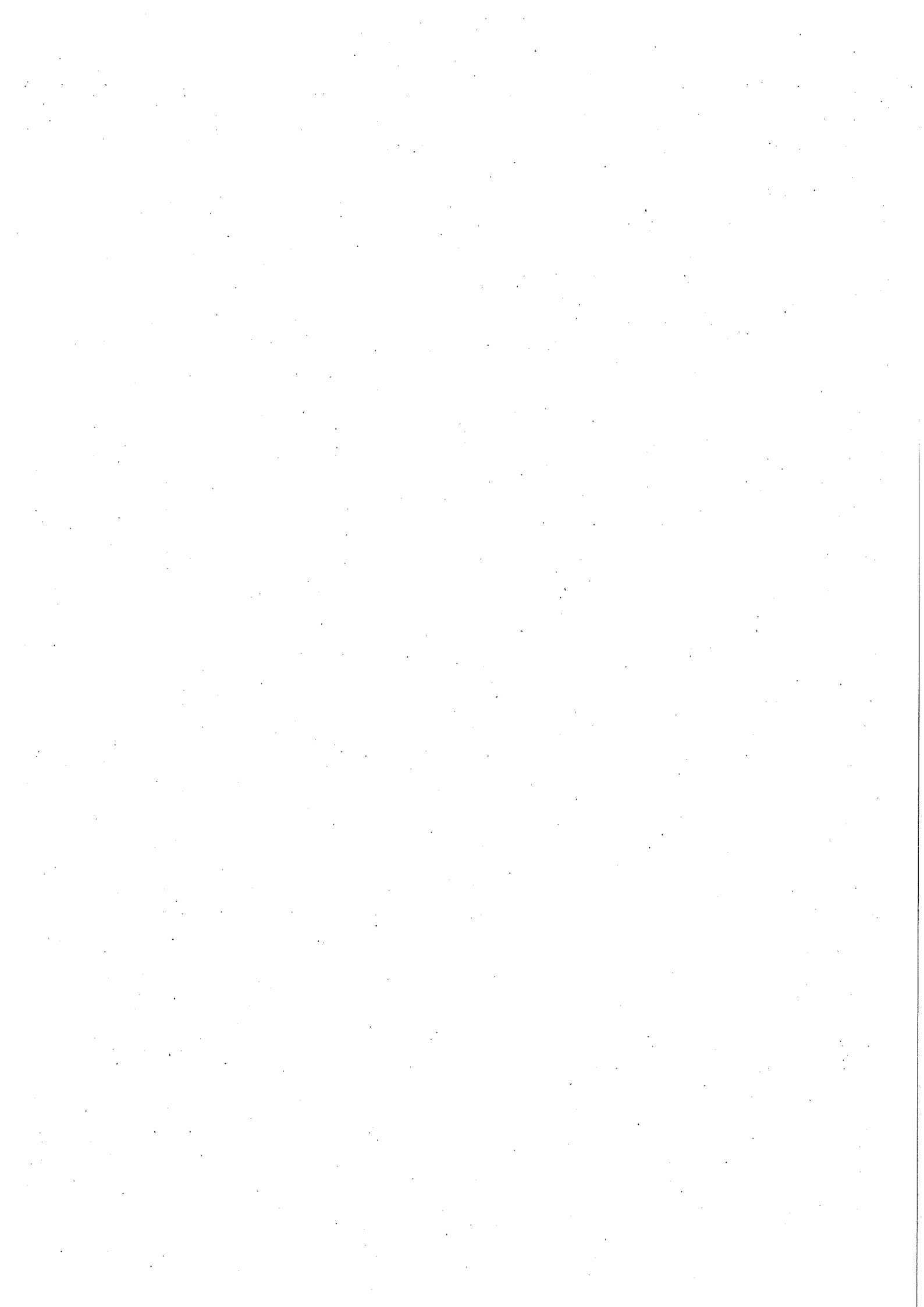
**Recommendations:**

- It is recommended that you note the information in this minute.

George Tomlins  
Executive Director  
Shared Services Procurement

May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014





**SUBJECT:** \_\_\_\_\_

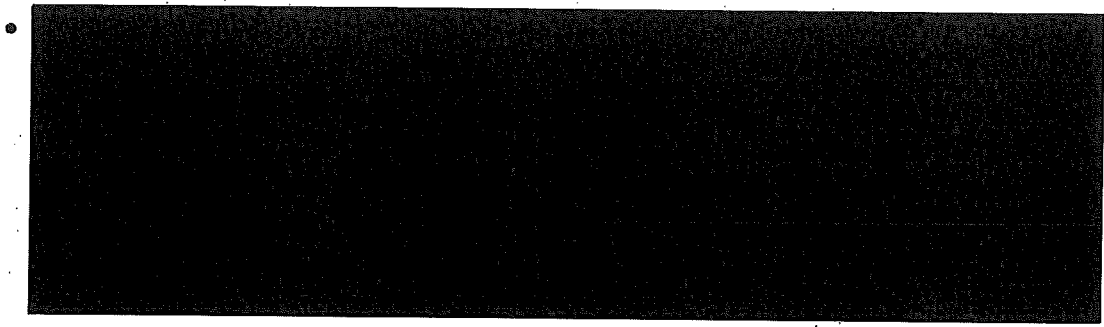
**To:** Treasurer

**Critical Date for consideration:** As soon as possible

**Purpose: To inform you of** \_\_\_\_\_

**Key Points:**

- [Current situation – administration?]

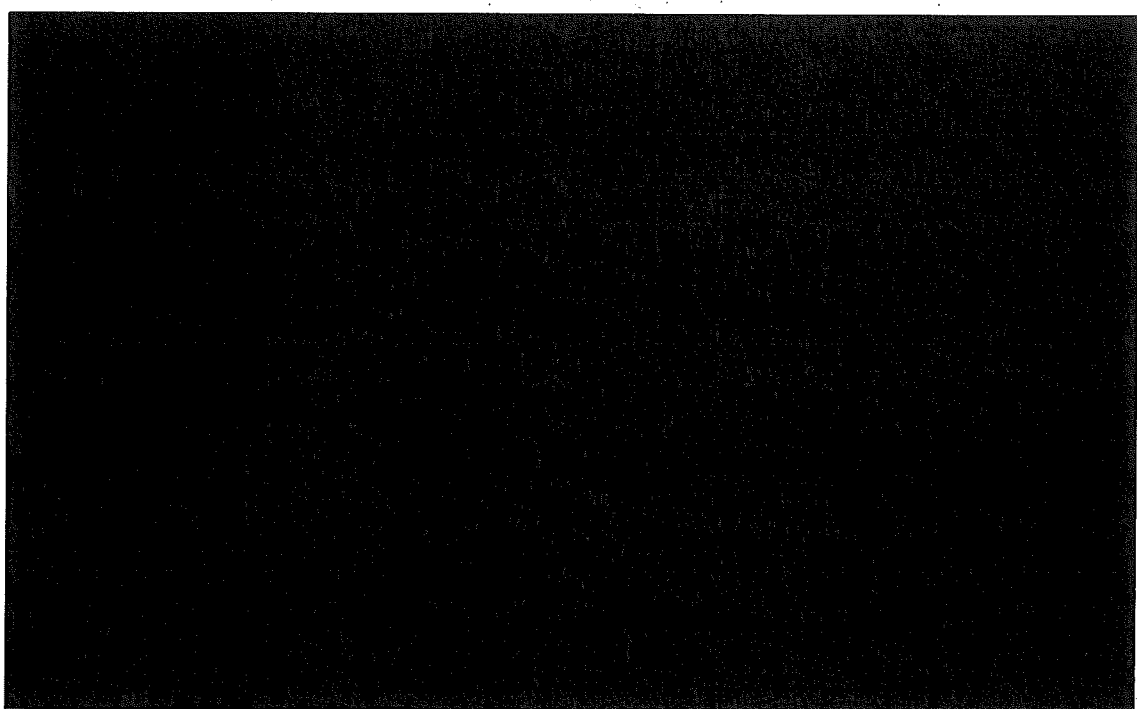


Majura Parkway

- SSP understands that the principal reason for Hewatt’s financial difficulties is its poor estimation of costs when entering into contract with Fulton Hogan Pty Ltd (“Fulton Hogan”) to perform earthworks on the Majura Parkway project, which has led to its being locked into uncommercial rates.
- On 17 April 2014, Hewatt wrote to Fulton Hogan requesting a release from its contract as it had become uneconomical to continue works. Hewatt stated that unless a release was granted or the contract terms re-negotiated, Hewatt would enter into administration on 1 May 2014.
- The Majura Parkway work site was shut down between 18 April 2014 and 28 April 2014 for the Easter/ANZAC Day period. Hewatt and Fulton Hogan met to discuss this dispute on 24 April 2014. Both parties agreed to work on reaching a mutually satisfactory resolution to the dispute, involving a renegotiation of Hewatt’s subcontract. Hewatt was consequently on-site for the week 28 April 2014 – 2 May 2014.
- Hewatt and Fulton Hogan met again on 2 May 2014 to further discuss the details of a revised contract between parties. Shared Services Procurement (“SSP”) understands that at this meeting, \_\_\_\_\_

- All of the work currently scheduled to be completed by Hewatt in the week beginning 5 May 2014 will be postponed, as Fulton Hogan plans to use this week to plan its steps forward.
- SSP understands that Fulton Hogan plans to engage [REDACTED] and [REDACTED] to perform the remaining earthworks which have not been completed by Hewatt. [REDACTED] will commence on-site on Monday 12 May 2014.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- It is expected that a number of Hewatt's current staff will have their employment ceased following Hewatt's withdrawal from the Majura Parkway project. However, the scope of works of the Majura Parkway project has not changed, and it is consequently expected that an equivalent number of workers will be engaged by [REDACTED] to complete these works as were originally engaged by Hewatt.
- Fulton Hogan have assured the Territory that [REDACTED] will not have any impact upon the budget or program of the Majura Parkway project, which will still be completed within the terms of Fulton Hogan's contract with the Territory.
- In awarding the tender for the Majura Parkway project, the Government has placed a high priority on protecting local sub-contractors.
- Employed the GC-21 contract form, which provides very strong protection for sub-contractors.
- It did not accept the lowest-priced bid for this project, but rather the one which best represented value for money.
- It should be noted that the principal reason for Hewatt's financial difficulties does not appear to be the primary contract between the Territory and the Head Contractor, but rather Hewatt's estimation of costs as a sub-contractor on this project.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.





- SSP understands that Hewatt has approximately 100 full-time employees, and an additional 30-40 staff employed as sub-contractors. Most of these sub-contractors are employed on 90-day contracts, with 'substantial' sub-contractors employed on special agreements of 120 days.
- Further, SSP understands that Hewatt owes monies to a number of other local firms for services provided on a sub-contractual basis for various projects. In particular, significant debts are owed to [REDACTED]
- Fulton Hogan has worked closely with Hewatt in an effort to resolve this situation without Hewatt entering into administration.

Steps Forward

- SSP and Roads ACT will meet with \_\_\_\_\_ as a matter of urgency to discuss \_\_\_\_\_  
– [OR: strategy for going forward]
- The Government will continue to hold all securities from Hewatt until all outstanding issues have been resolved.

- SSP will continue to work closely with Fulton Hogan to ensure the Majura Parkway project remains on program and within budget. SSP will also liaise with representatives of the unions to hear any concerns they may have and outline what actions it will take going forward.

**Recommendations:**

- It is recommended that you note the information in this minute.

George Tomlins  
Executive Director  
Shared Services Procurement

May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014



**SUBJECT:** \_\_\_\_\_

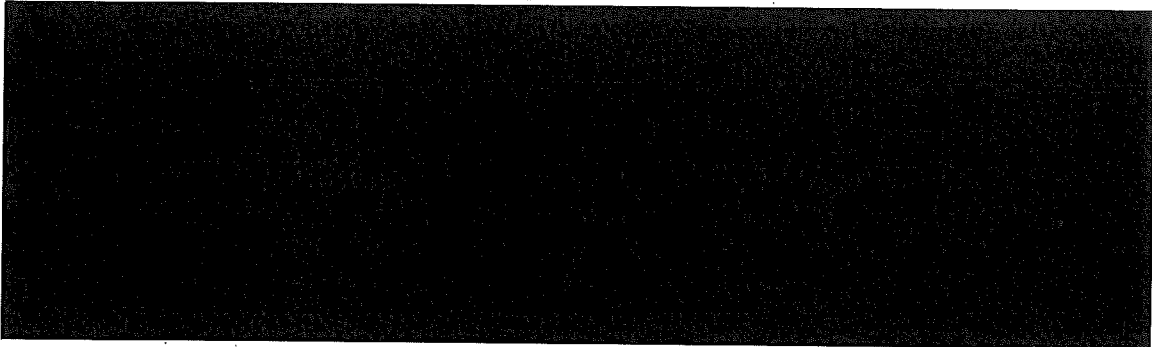
**To:** Treasurer

**Critical Date for consideration:** As soon as possible

**Purpose: To inform you of** \_\_\_\_\_

**Key Points:**

- [Current situation – administration?]



Majura Parkway

- SSP understands that the principal reason for Hewatt's financial difficulties is its poor estimation of costs when entering into contract with Fulton Hogan Pty Ltd ("Fulton Hogan") to perform earthworks on the Majura Parkway project, which has led to its being locked into uncommercial rates.
- On 17 April 2014, Hewatt wrote to Fulton Hogan requesting a release from its contract as it had become uneconomical to continue works. Hewatt stated that unless a release was granted or the contract terms re-negotiated, Hewatt would enter into administration on 1 May 2014.
- The Majura Parkway work site was shut down between 18 April 2014 and 28 April 2014 for the Easter/ANZAC Day period. Hewatt and Fulton Hogan met to discuss this dispute on 24 April 2014. Both parties agreed to work on reaching a mutually satisfactory resolution to the dispute, involving a renegotiation of Hewatt's subcontract. Hewatt was consequently on-site for the week 28 April 2014 – 2 May 2014.
- Hewatt and Fulton Hogan met again on 2 May 2014 to further discuss the details of a revised contract between parties. Shared Services Procurement ("SSP") understands that at this meeting, \_\_\_\_\_

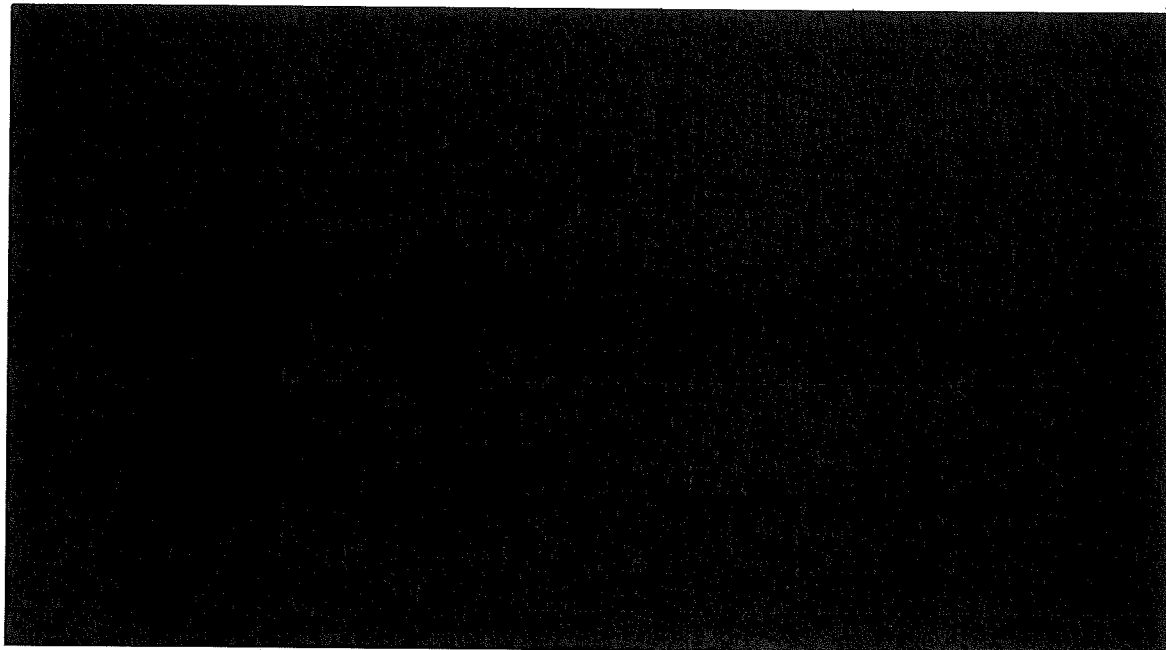
**Contact:** Ben Power

**Position:** Government Business Officer

**Extension:** x79342

**File No.:** \_\_\_\_\_

- All of the work currently scheduled to be completed by Hewatt in the week beginning 5 May 2014 will be postponed, as Fulton Hogan plans to use this week to plan its steps forward.
- SSP understands that Fulton Hogan plans to engage [REDACTED] and [REDACTED] to perform the remaining earthworks which have not been completed by Hewatt. [REDACTED] will commence on-site on Monday 12 May 2014.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party. As Hewatt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- It is expected that a number of Hewatt's current staff will have their employment ceased following Hewatt's withdrawal from the Majura Parkway project. However, the scope of works of the Majura Parkway project has not changed, and it is consequently expected that an equivalent number of workers will be engaged by [REDACTED] to complete these works as were originally engaged by Hewatt.
- Fulton Hogan have assured the Territory that [REDACTED] will not have any impact upon the budget or program of the Majura Parkway project, which will still be completed within the terms of Fulton Hogan's contract with the Territory.
- The Government has taken many significant measures to protect local sub-contractors on the Majura Parkway project.
- Did not accept the lowest-priced bid for the project, but rather the one which best represented value for money
- Employed the GC-21 contract form, which provides very strong protection for sub-contractors.
- It should be noted that the principal reason for Hewatt's financial difficulties appears to be its estimation of costs
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.



- SSP understands that Hewatt has approximately 100 full-time employees, and an additional 30-40 staff employed as sub-contractors. Most of these sub-contractors are employed on 90-day contracts, with 'substantial' sub-contractors employed on special agreements of 120 days.
- Further, SSP understands that Hewatt owes monies to a number of other local firms for services provided on a sub-contractual basis for various projects. In particular, significant debts are owed to [REDACTED]
- Fulton Hogan has worked closely with Hewatt in an effort to resolve this situation without Hewatt entering into administration.

#### Steps Forward

- SSP and Roads ACT will meet with \_\_\_\_\_ as a matter of urgency to discuss \_\_\_\_\_  
— [OR: strategy for going forward]
- The Government will continue to hold all securities from Hewatt until all outstanding issues have been resolved.
- SSP will continue to work closely with Fulton Hogan to ensure the Majura Parkway project remains on program and within budget. SSP will also liaise with

representatives of the unions to hear any concerns they may have and outline what actions it will take going forward.

**Recommendations:**

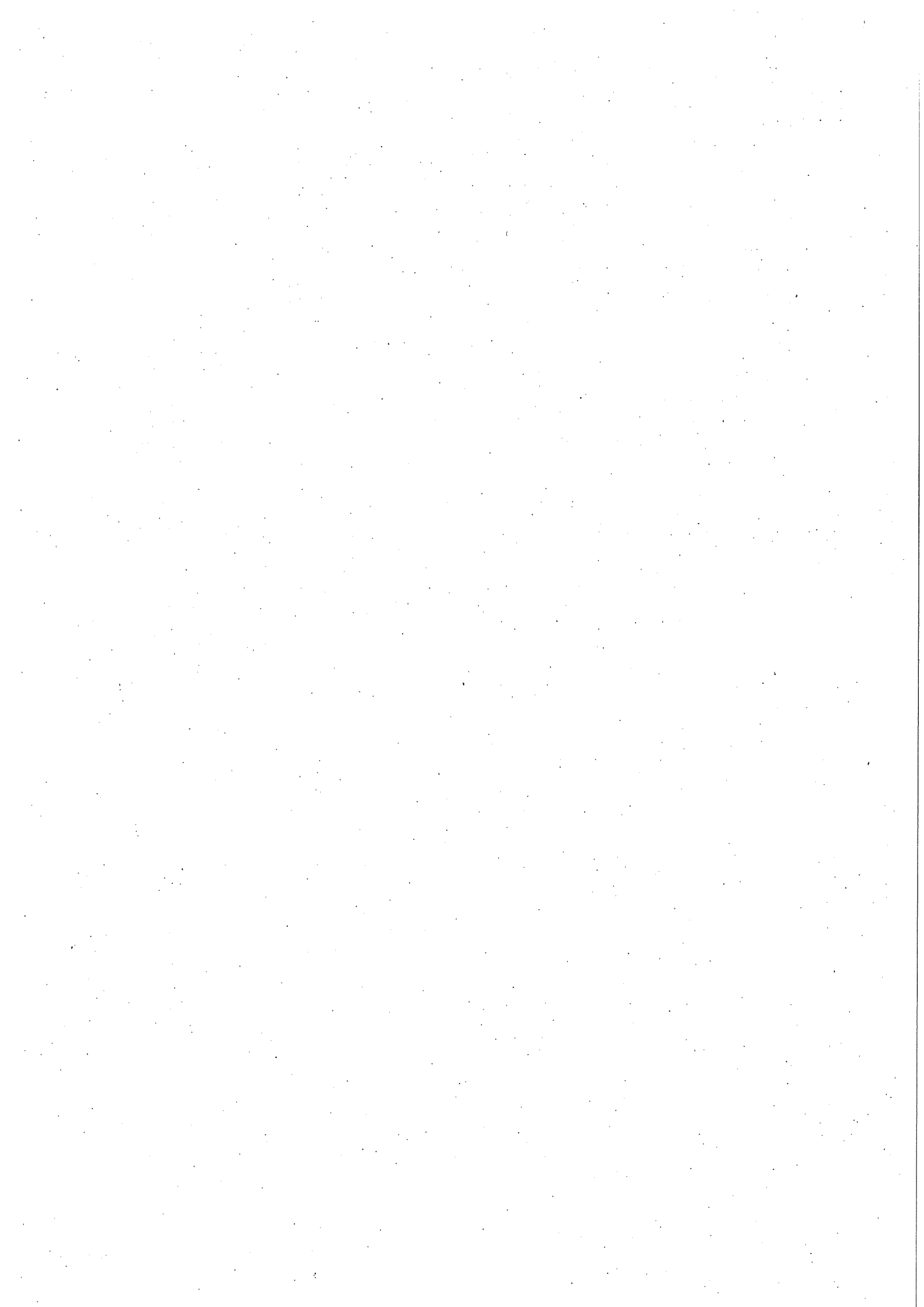
- It is recommended that you note the information in this minute.

George Tomlins  
Executive Director  
Shared Services Procurement

May 2014

Noted / Approved / Not approved / Please discuss  
Andrew Barr MLA / /2014

- Hewatt Pty Ltd ("Hewatt") has been engaged as a subcontractor on the Majura Parkway project by Fulton Hogan Pty Ltd ("Fulton Hogan"). On 5 May 2014, Hewatt withdrew from its contract with Fulton Hogan following a series of negotiations over several weeks.
- The scope of work of the Majura Parkway project has not changed, and it is expected that work which was previously contracted to Hewatt will be picked up by other elements of the local construction industry.
- Fulton Hogan has assured the Government that the Majura Parkway project will be completed according to the program and budget established in its existing contract with the Territory.
- This is a commercial dispute between contractors and does not directly involve the ACT Government. It would not be appropriate for me to comment further on this matter at this stage.







**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR DISPUTE**

**To:** Director-General, Commerce & Works Directorate

**Critical Date for consideration:** 16 April 2014

**Purpose:** **To brief you and update on a potential dispute between contractors on the Majura Parkway Project**

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**Key Points:**

- Through informal communication with industry, Shared Services Procurement (“SSP”) has become aware that Hewatt Pty Ltd (“Hewatt”) is considering asking for a release of its contract with Fulton Hogan Pty Ltd (“Fulton Hogan”) for work on the Majura Parkway project. Hewatt are contracted to perform earthworks on this project.
- It is believed that the reason for this request is that continuing with the existing contract has become uneconomical for Hewatt. SSP understands that there are considerable amounts of money involved in this dispute.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party.
  - As Hewitt is a sub-contractor to Fulton Hogan and not directly engaged by the Territory, the head contractor will remain responsible for delivering Majura Parkway in accordance with the time and cost set out in the contract.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.
- Fulton Hogan has not yet received formal written notification from Hewatt of any intention to be released of its contract.
- While some truck drivers may lose employment with Hewatt, replacement operators will need to be employed to do the remaining work.
- Hewatt hold two current Territory contracts, both of which are for work on Horse Park Drive. These contracts are:
  - extension to Burramarra Avenue to Mirrabei Drive (\$9 million) due to expire on 31 October 2015; and

- extension to Moncrieff Group Centre (\$16.9 million) due to expire on 15 April 2015.



**Recommendations:**

- It is recommended that you note the information in this minute.

George Tomlins  
Executive Director  
Shared Services Procurement

April 2014

Noted / Approved / Not approved / Please discuss  
Megan Smithies / /2014



**SUBJECT: MAJURA PARKWAY PROJECT – CONTRACTOR DISPUTE**

To: Director-General, Commerce & Works Directorate

Critical Date for consideration: 15 April 2014

**Purpose: To brief you on a potential dispute between contractors on the Majura Parkway Project**

---

**Key Points:**

- Through informal communication with industry, Shared Services Procurement (“SSP”) has become aware that Hewatt Pty Ltd (“Hewatt”) is considering asking for a release of its contract with Fulton Hogan Pty Ltd (“Fulton Hogan”) for work on the Majura Parkway project. Hewatt are contracted to perform earthworks on this project.
- It is believed that the reason for this request is that continuing with the existing contract has become uneconomical for Hewatt. SSP understands that there are considerable amounts of money involved in this dispute.
- This is a commercial dispute between parties, and does not directly involve the ACT Government. No requests for involvement by the Territory have been made by either party.
- SSP is continuing to investigate whether all sub-contractors and sub-sub-contractors have been paid on the Majura Parkway project.

**Recommendations:**

- It is recommended that you note the information in this minute.

George Tomlins  
Executive Director  
Shared Services Procurement

April 2014

Noted / Approved / Not approved / Please discuss

Megan Smithies / /2014

